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8 RONALD W. BRATTON,
9 Plaintiff,
10 v.
11 S.R. ALBRITTON, et. al.,
12 Defendants.
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16 Case No. 20-cv-03885 BLF (PR)
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**ORDER DIRECTING
DEFENDANTS' COUNSEL TO FILE
NOTICE OF SUGGESTION OF
DEATH OF DEFENDANT
SANDLER AND SERVE ON ALL
PARTIES**

19 Plaintiff, a state inmate filed instant *pro se* civil rights action pursuant to 42 U.S.C.
20 § 1983 against personnel at San Quentin State Prison. Dkt. No. 1. On August 22, 2022,
21 the Court found the complaint, liberally construed, stated cognizable claims and ordered
22 the matter served on Defendants. Dkt. No. 22. The order directed the Clerk to send
23 Requests for Waiver of Service of Summons to Defendants S. R. Albritton, Dr. S.
24 Garrigan, Dr. Sandler, A. Maxfield, and N. Smith. *Id.* at 4. On September 26, 2022, the
25 CDC filed a reported of E-Service Waiver under seal, indicating that Dr. Sandler
26 (Psychologist-Clinical) is deceased. Dkt. No. 23. Defendants Albritton, Garrigan,
27 Maxfield, and Smith have been served, and counsel has appeared on their behalf. Dkt.
Nos. 25, 27.

28 “If a party dies and the claim is not thereby extinguished, the court may order

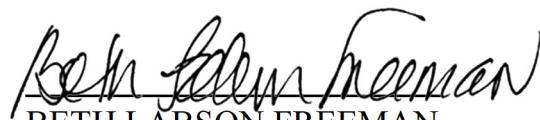
1 substitution of the proper party. A motion for substitution may be made by any party or by
2 the decedent's successor or representative. If the motion is not made within 90 days after
3 service of a statement noting the death, the action by or against the decedent must be
4 dismissed." Fed. R. Civ. P. 25(a). Two things are required of a party for the running of
5 the 90 day period to commence: a party must 1) formally suggest the death of the party on
6 the record, and 2) serve the suggestion of death on the other parties and nonparty
7 successors or representatives. *Barlow v. Ground*, 39 F.3d 231, 233 (9th Cir. 1994). A
8 party may be served the suggestion of death by service on his or her attorney, Fed. R. Civ.
9 P. 5(b), while non-party successors or representatives of the deceased party must be served
10 the suggestion of death in the manner provided by Rule 4 for the service of a summons.
11 Fed. R. Civ. P. 25(a)(3); *Barlow*, 39 F.3d at 232-34. Rule 25 requires dismissal absent a
12 motion for substitution within the 90 day period only if the statement of death was
13 properly served. *Unicorn Tales, Inc., v. Bannerjee*, 138 F.3d 467, 469-71 (2d Cir. 1998).

14 The CDCR's notice does not constitute a formal suggestion of death for Defendant
15 Sandler. Accordingly, Defendants' counsel is directed to file a formal suggestion of death
16 **no later than twenty-eight (28) days** from the date this order is filed and serve it on the
17 other parties and nonparty successors or representatives of Defendant Sandler's estate.
18 Counsel shall file notice of service along with the suggestion of death.

19 After a successor or representative of deceased Defendant Sandler has been located,
20 Plaintiff must move for substitution **no later than twenty-eight (28) days** after receiving
21 notice of the successor or representative of Defendant Sandler's estate.

22 **IT IS SO ORDERED**

23 Dated: November 8, 2022



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BETH LABSON FREEMAN
United States District Judge